IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 16945 of 2007(P)

PETITIONER:

DR.S.REJIT KUMAR, ASSISTANT SURGEON,
MEDICAL COLLEGE HEALTH UNIT, AMBALAPUZHA,
ALAPPUZHA.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE POST GRADUATE SELECTION COMMITTEE,
REPRESENTED BY ITS CHAIRMAN, THIRUVANANTHAPURAM
(THE SECRETARY TO GOVERNMENT, HEALTH AND FAMILY
WELFARE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

3. THE DIRECTOR OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM.

4. THE DIRECTOR OF HEALTH SERVICES,
THIRUVANANTHAPURAM.

5. DR.RAJAN T.K., `VISWAPRABHA',
THANDAN KANDIYIL HOUSE, J.T.ROAD, BADAGARA,
KOZHIKODE DISTRICT.

BY ADV. SRI.SUDHEESH.A.
SMT.C.V.BINDU
BY GOVT. PLEADER SMT.ANU SIVARAMAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007, ALONG WITH WPC NO. 16939 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP(C) NO.16945 OF 2007)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of Order dtd.6.12.2002 issued by the 4th respondent.

Ext.P2: Copy of Disability Certificate issued to the petitioner.

Ext.P3: Copy of Prospectus for admission to Medical P.G.Degree/Diploma Courses-07.

Ext.P4: Copy of Admit Card issued to the petitioner.

Ext.P5: Copy of the final seniority list in the different quotas published by the 4th respondent.

Ext.P6: Copy of the Memo dtd.13.4.2006 issued to the petitioner.

-True Copy-

P.A.to Judge.

S.SIRI JAGAN, J.

W.P(C) Nos. 16939 & 16945 OF 2007

Dated this the 13th day of June, 2007

J U D G M E N T

The petitioners in these two writ petitions are Assistant Surgeons in the Health Service Department. They are aspirants for admission to the Post Graduate Medical Courses in Medical Colleges in the Kerala State. Their grievance stems from a judgment of mine in W.P.(C) No.14927/2007 filed by the fifth respondent in W.P.(C) No.16945/2007 who is the third respondent in the other writ petition. The fifth respondent challenged his non-consideration for selection for admission to Post Graduate Medical Courses on the ground that he had not completed probation in his post which is an eligibility condition as per Clause VII (a)(4) of the prospectus issued for the admission. I had passed an interim order in that case directing that the fifth respondent be allowed to participate in the counselling process including admission. Subsequently, the writ petition was allowed holding that Clause VII(a)(4) is unconstitutional and confirming my interim orders. Now the situation is that the petitioners in

these writ petitions are senior in service to the fifth respondent in W.P(C) No.16945/2007. As a result, for the purpose of higher options, they are entitled to preference as against the fifth respondent. Apart from that, they being in the preferential category of Assistant Surgeons of Rural Service quota, they are entitled to preference as against the fifth respondent.

2. The contention of the fifth respondent is that on the date of counselling, the only available option of the petitioners was M.D.(Paediatrics) which was allotted to him and therefore, there is nothing wrong with his admission.

3. The learned Government Pleader, on the other hand, submits that since the admission had to be closed on 31.5.2007, the available seat was allotted to the fifth respondent provisionally without giving opportunity to the petitioners to exercise their higher option first and that does not give any preferential right to the fifth respondent as against the petitioners in these two writ petitions.

4. I had considered the rival contentions in detail. In the judgment in the writ petition filed by the fifth respondent in W.P. (C) No.16945/2007, all what I have held is that the fifth

respondent cannot be held to be ineligible for consideration for admission on the ground that he has not completed the probation. That being so, his admission can only be subject to the other clauses in the prospectus and subject to the preferential claims of other eligible candidates. Clause 7 of Ext.P3 prospectus in W.P.(C) No.16945/2007 specifically refers to the preferences of various categories. In sub-clause (e) thereof, it is specifically stated that if seats become vacant in a particular Health Service Quota, options will be invited from the candidates of other Health Service Quota and will be allotted in the following order of rotation. The rotation is as follows:-

> "**1.DRAQ, 2.RSQ, 3.SSQ, 4.IMS, 5.Municipal Service***
>
> *among the vacant seats the first seat will be allotted to the candidate under the first category second seat to second catgory and so on according to the option of the candidates in each category."

It is admitted before me that there is no one in the DRAQ seeking admission to the vacancy which has risen, to which all the three before me aspires for. Therefore, eligibility for higher option to that vacant seat and the seat, which may be left vacant by the candidate opting for that seat, can only be in accordance with clause 7(e) irrespective of the fact that the fifth respondent is

also entitled to be considered for admission, notwithstanding Clause VII(a)(4). The fact that he is entitled to be considered for admission does not give him any right as against the right of higher option by other preferential category candidates notwithstanding the above said clause. Therefore, it is made clear that allotment of seats in the various subjects shall be strictly in accordance with the provisions of the prospectus and rules regarding quotas prescribed for each. For allotting subjects in accordance with the quotas prescribed, if it is necessary to readjust the subjects of the petitioners in these two writ petitions and the fifth respondent in W.P.(C) No.16495/2007, the second respondent shall re-allot the subjects in accordance with the higher options made by the candidates and in accordance with their preferential right for higher option based on the rules in the prospectus. This shall be done within a period of two weeks from the date of receipt of a copy of this judgment.

The writ petitions are disposed of with the above direction.

Sd/-

S.SIRI JAGAN,
Judge

Mbs/

-true copy-